

Travis Wilke
339 Main Street
Kimberly, WI 54136,

and

Cyrene Wilke
339 Main Street
Kimberly, WI 54136,

Plaintiffs,

v.

Case Code: 30104
MEDICAL MALPRACTICE CH. 655

11 CV 1897

Stephen S. Dudley, M.D.
223 S. Nicolet Road
Appleton, WI 54914,

Optivision Eye Care, LLP
503 Doctors Court
Oshkosh, WI 54901,

The Eye Clinic of the Fox Valley, S.C.
503 Doctors Court
Oshkosh, WI 54901,

ABC Insurance Company,
a fictitious insurance company,

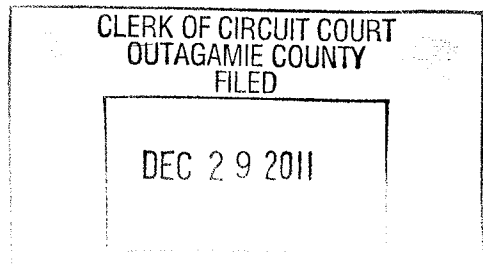
XYZ Insurance Company,
a fictitious insurance company,

Defendants,

and

Wellpoint, Inc. d/b/a Anthem Blue Cross and Blue Shield of Wisconsin
CT Corporation System, Registered Agent
8040 Excelsior Drive, Suite 200
Madison, WI 53717

Subrogated Defendant.



SUMMONS

THE STATE OF WISCONSIN

To each person named above as a defendant:

You are hereby notified that the plaintiffs named above have filed a lawsuit or other legal action against you. The complaint, which is attached, states the nature and basis of the legal action.

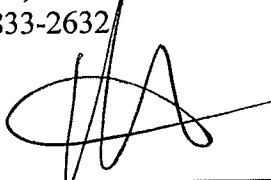
Within 45 days of receiving this summons, you must respond with a written answer, as that term is used in Chapter 802 of the Wisconsin Statutes, to the complaint. The court may reject or disregard an answer that does not follow the requirements of the statutes. The answer must be sent or delivered to the court, whose address is Outagamie County Justice Center, Second Floor, 320 S. Walnut Street, Appleton, WI 54915, and to the Law Office of Todd Krouner, Plaintiffs' attorneys, whose address is 93 North Greeley Avenue, Chappaqua, NY 10514 and Gingras, Cates & Luebke, S.C., Plaintiffs' attorneys, whose address is 8150 Excelsior Drive, Madison, Wisconsin 53717. You may have an attorney help or represent you. If you require the assistance of auxiliary aids or services because of a disability, call (920) 832-5131 and ask for the court ADA Coordinator.

If you do not provide a proper answer within 45 days, the court may grant judgment against you for the award of money or other legal action requested in the complaint, and you may lose your right to object to anything that is or may be incorrect in the complaint. A judgment may be enforced as provided by law. A judgment awarding money may become a lien against any real estate you own now or in the future, and may also be enforced by garnishment or seizure of property.

Dated this 28 day of December, 2011.

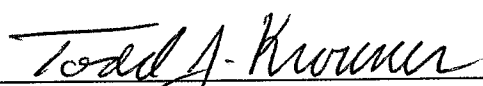
GINGRAS, CATES & LUEBKE, S.C.
8150 Excelsior Drive
Madison, WI 53717
(608) 833-2632

BY: _____


Robert J. Gingras
State Bar No. 1002909
Heath P. Straka
State Bar No. 1031351

LAW OFFICE OF TODD J. KROUNER
93 North Greeley Avenue
Chappaqua, NY 10514
(914) 238-5800

BY: _____


Todd J. Krouner
Application *Pro Hac Vice* Pending
Scott J. Koplik
Application *Pro Hac Vice* Pending

ATTORNEYS FOR PLAINTIFFS



Travis Wilke
339 Main Street
Kimberly, WI 54136,

and

Cyrene Wilke
339 Main Street
Kimberly, WI 54136,

Plaintiffs,

v.

Case Code: 30104
MEDICAL MALPRACTICE CH. 655

11 CV 1897

Stephen S. Dudley, M.D.
223 S. Nicolet Road
Appleton, WI 54914,

Optivision Eye Care, LLP
503 Doctors Court
Oshkosh, WI 54901,

The Eye Clinic of the Fox Valley, S.C.
503 Doctors Court
Oshkosh, WI 54901,

ABC Insurance Company,
a fictitious insurance company,

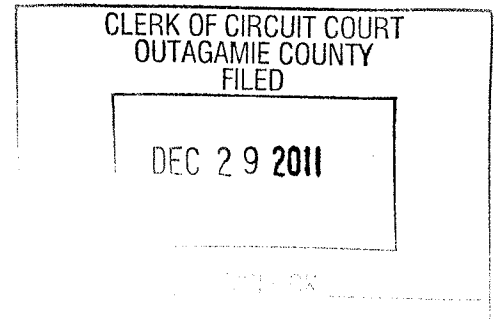
XYZ Insurance Company,
a fictitious insurance company,

Defendants,

and

Wellpoint, Inc. d/b/a Anthem Blue Cross and Blue Shield of Wisconsin
CT Corporation System, Registered Agent
8040 Excelsior Drive, Suite 200
Madison, WI 53717

Subrogated Defendant.



COMPLAINT

NOW COME THE PLAINTIFFS, Travis Wilke (“Mr. Wilke”) and Cyrene Wilke (“Mrs. Wilke”) (collectively, “Plaintiffs”), by their attorneys Law Office of Todd J. Krouner, by Todd J. Krouner and Scott J. Koplik, and Gingras, Cates & Luebke, S.C., by Robert J. Gingras, as and for causes of action against the above-named defendants Stephen S. Dudley, M.D. (“Dr. Dudley”), Optivision Eye Care, LLP (“Optivision”), the Eye Clinic of the Fox Valley, S.C. (“ECFV”), ABC Insurance Company (“ABC”), and XYZ Insurance Company (“XYZ”) (collectively, “Defendants”).

INTRODUCTION

1. This is a case of LASIK eye surgery malpractice that resulted in the patient suffering a serious permanent visual disability in both eyes. In short, the patient was never a suitable candidate for LASIK surgery. Yet, Defendants sold him services that never should have been offered or performed. As a result, the patient suffered vision threatening post-LASIK ectasia.

2. In January 1998, Mr. Wilke presented at Optivision to undergo a consultation for LASIK surgery with Dr. Dudley. Defendants explained to Mr. Wilke that at that point, he was not a good candidate for the surgery, due to the condition of his corneas. Defendants directed Mr. Wilke to return for periodic examinations, in the hope that the LASIK technology might improve.

3. Mr. Wilke consulted with Defendants again in October 2002, August 2004, and November 2006.

4. During his examination on November 28, 2006, Dr. Dudley told Mr. Wilke that he was a suitable candidate for LASIK surgery, even though he had an abnormal appearing corneal topography.

5. In fact, the abnormal appearing corneal topography indicated that Mr. Wilke had keratoconus, for which LASIK surgery was a known contraindication.

6. On or about January 18, 2007, while failing to appreciate that surgery was contraindicated, Defendants performed their initial negligent LASIK surgery upon both of Mr. Wilke's eyes.

7. Predictably, the initial surgery failed, leaving Mr. Wilke with blurry vision in his left eye. Consequently, Defendants scheduled corrective surgery, which in the LASIK industry is euphemistically referred to as an "enhancement." Defendants performed the so-called enhancement on Mr. Wilke's left eye on or about August 23, 2007. However, due to the condition of Mr. Wilke's left eye, his enhancement was also contraindicated.

8. Consequently, rather than enhancing Mr. Wilke's vision, the second surgery actually made it worse. During his consultation in June 2009, Mr. Wilke reported blurred vision, decreased vision, visual changes, discomfort and irritation. On June 16, 2009, his visual acuity in his left eye was measured at 20/60.

9. As a result of the repeated, contraindicated surgeries, Mr. Wilke developed post-LASIK ectasia in both eyes, with the left eye worse than the right.

10. Individuals with post-LASIK ectasia, including Mr. Wilke, suffer from problems related not only to the clarity of their vision, or visual acuity, but also to the quality of their vision, including without limitation, halos, blurry vision, glare, ghosting, starbursts, double

vision, light sensitivity, contrast sensitivity, loss of depth perception, difficulty driving, especially at night, headaches, dry eyes, and foreign body sensation.

11. In an apparent effort to curtail the progression of Mr. Wilke's post-LASIK ectasia, Dr. Dudley performed a third refractive surgery, conductive keratoplasty ("CK"), on Mr. Wilke's left eye on or about June 20, 2009. By that point, the damage had been done, and the CK surgery had little to no effect on Mr. Wilke's condition.

PARTIES

12. Plaintiff Mr. Wilke is an adult resident of the State of Wisconsin. Mr. Wilke currently resides with his wife, Mrs. Wilke, at 339 Main Street, Kimberly, WI 54136.

13. Plaintiff Mrs. Wilke is an adult resident of the State of Wisconsin. Mrs. Wilke currently resides with her husband, Mr. Wilke, at 339 Main Street, Kimberly, WI 54136.

14. Defendant Dr. Dudley is an adult resident of the State of Wisconsin. He is a physician licensed to practice in Wisconsin. Dr. Dudley's current business address is 223 S. Nicolet Road, Appleton, WI 54914. Dr. Dudley is a board certified ophthalmologist, licensed to provide ophthalmologic services in the State of Wisconsin.

15. Defendant Optivision is a limited liability partnership created and existing under the laws of the State of Wisconsin, with a principal office address of 503 Doctors Court, Oshkosh, WI 54901. At all material times, Optivision employed and/or engaged various individuals who were involved in the care and treatment of Mr. Wilke. Such individuals were, at all material times, acting as real, apparent and/or ostensible agents, servants, employees and/or representatives of Optivision. The registered agent for service of process is Dr. Dudley, 503 Doctors Court, Oshkosh, WI 54901.

16. Defendant ECFV is a service corporation created and existing under the laws of the State of Wisconsin, with a principal office address of 503 Doctors Court, Oshkosh, WI 54901. At all material times, ECFV employed and/or engaged various individuals who were involved in the care and treatment of Mr. Wilke. Such individuals were, at all material times, acting as real, apparent and/or ostensible agents, servants, employees and/or representatives of ECFV. The registered agent for service of process is Dr. Dudley, 503 Doctors Court, Oshkosh, WI 54901.

17. Defendant ABC and XYZ are fictitious insurance companies and are named because Defendants' liability insurance companies are presently unknown. Plaintiffs will amend the Complaint once the names of Defendants' liability insurance carriers are known.

18. Subrogated Defendant Wellpoint, Inc. d/b/a Anthem Blue Cross and Blue Shield of Wisconsin ("Anthem") is an insurance company, which is named due to its potential subrogation interest, having made payments on behalf of Mr. Wilke, due to the injuries resulting from the negligence which is the subject of this Complaint. Anthem's registered agent is CT Corporation System, 8040 Excelsior Drive, Suite 200, Madison, WI 53717. Anthem's principal office address within the State of Wisconsin is 6775 W. Washington Street, Milwaukee, WI 53214.

ALLEGATIONS OF FACT

19. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 18 of this Complaint with the same force and effect as if set forth fully hereinafter.

20. In or about January 1998, Mr. Wilke came under the care and treatment of Defendants for evaluation as a candidate for LASIK surgery. At that time, Defendants advised

Mr. Wilke that he was not a good candidate for LASIK surgery, but directed Mr. Wilke to return for periodic re-examinations and re-evaluations.

21. In November 2006, despite clear evidence of keratoconus, a contraindication for LASIK surgery, Defendants, individually and/or through their real, apparent and/or ostensible agents, servants, employees and/or representatives, told Mr. Wilke that Dr. Dudley could perform the LASIK surgery, and that any risks to Mr. Wilke were minimal.

22. On or about January 18, 2007, Defendants, individually and/or through their real, apparent and/or ostensible agents, servants, employees and/or representatives, performed contraindicated LASIK surgery on both of Mr. Wilke's eyes.

23. On or about August 23, 2007, Dr. Dudley performed contraindicated "enhancement" LASIK surgery on Mr. Wilke's left eye.

24. On or about June 20, 2009, in an apparent effort to arrest the progression of Mr. Wilke's post-LASIK ectasia, Dr. Dudley performed CK surgery on Mr. Wilke's left eye.

25. Mr. Wilke did not learn that he had post-LASIK ectasia, however, until October 12, 2011. On that day, Dr. Dudley's colleague, M. Camille Almond, M.D. ("Dr. Almond"), told Mr. Wilke of his dire diagnosis.

26. As a result of the LASIK surgeries performed by Dr. Dudley, Mr. Wilke suffered post-LASIK ectasia.

27. As a result of the LASIK surgeries performed by Dr. Dudley, Plaintiffs sustained severe and permanent physical injuries, including without limitation, loss of vision; emotional distress; loss of services, including loss of consortium; experienced pain and suffering; have suffered emotionally; have incurred unnecessary past and future medical expenses the treatment of Mr. Wilke's injuries; have incurred past and future lost wages, including loss of earning

capacity; and were otherwise damaged in an amount to be proven at trial. Such injuries are permanent in nature.

28. All of these injuries and damages were caused by the negligent acts and omissions of Defendants, individually and/or through their real, apparent and/or ostensible agents, servants, employees and/or representatives, without any negligence or want of due care on the part of Plaintiffs thereunto contributing.

FIRST CAUSE OF ACTION
MEDICAL NEGLIGENCE AGAINST DR. DUDLEY

As for a first cause of action against the above-named Defendants, Plaintiffs allege and show the following to the Court:

29. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 28 of this Complaint with the same force and effect as if set forth fully hereinafter.

30. At all times of which Plaintiffs complain, Defendant Dr. Dudley was a licensed ophthalmologist, and represented to the public and to Plaintiffs possession of that degree of skill, knowledge and ability ordinarily possessed by a reasonably competent ophthalmologist.

31. Defendant Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, owed to Mr. Wilke a duty to exercise that degree of care, skill and judgment ordinarily expected of a reasonably competent practitioner of his chosen specialty acting in the same or similar circumstances, which duty included the performance of adequate and proper tests and procedures to determine the nature and severity of the conditions of Mr. Wilke; the careful diagnosis of such conditions; the employment of appropriate procedures and treatments to correct such conditions; the continuous evaluation of the effects of such treatments; the adjustment of the course of treatment in response

to such evaluations; and the appropriate notification to Mr. Wilke of the various alternatives and risks involved in various modalities of treatment.

32. On or about January 18, 2007, and August 23, 2007, Mr. Wilke came under the care and treatment of Defendant Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, for the purpose of screening for and undergoing refractive surgery on both eyes, known as LASIK surgery.

33. Defendant Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, was negligent in that he failed to use the degree of care, skill and judgment that reasonable physicians would use in the care and treatment of a patient, by failing to properly and timely recognize that due to the condition of Mr. Wilke's eyes, including without limitation, keratoconus, suspicion for keratoconus, form fruste keratoconus, early keratoconus and/or frank keratoconus, Mr. Wilke was not a suitable candidate for LASIK surgery. Defendant Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, was otherwise negligent in the care and treatment he provided to Mr. Wilke.

34. The negligent and careless acts and omissions of Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, include without limitation:

- a. failing to employ adequate diagnostic procedures and tests to determine the nature and severity of Mr. Wilke's conditions;
- b. failing to diagnose such conditions carefully;
- c. failing to employ appropriate treatments and procedures to correct such conditions;
- d. failing to carefully and thoroughly evaluate the effects of the chosen treatments;

- e. failing to adjust such chosen treatments in response to evaluation of the effects of prior treatments;
- f. failing to recognize that due to the condition of Mr. Wilke's eyes, each of the LASIK surgeries performed was contraindicated;
- g. failing to train, supervise and/or manage Defendants' agents, servants and/or employees; and
- h. being otherwise negligent and careless.

35. Such failures by Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, is negligence, separate and apart from the failure to comply with the standard of care.

36. As a direct and proximate result of the negligence of Defendant Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, Plaintiffs suffered the injuries and damages enumerated herein.

37. As a direct and proximate result of the negligence of Defendant Dr. Dudley, individually and/or through his real, apparent and/or ostensible agents, servants, employees and/or representatives, Defendants Dr. Dudley and ABC are directly liable to Plaintiffs in an amount to be proven at trial.

SECOND CAUSE OF ACTION
RESPONDEAT SUPERIOR AGAINST OPTIVISION AND ECFV

As for a second cause of action against the above-named Defendants, Plaintiffs allege and show the following to the Court:

38. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 37 of this Complaint with the same force and effect as if set forth fully hereinafter.

39. Defendants Optivision and ECFV are made a party to this lawsuit by virtue of the fact that, at all times material to this action, Defendant Dr. Dudley, and others who provided care and treatment to Mr. Wilke, were real, apparent and/or ostensible agents, servants, employees, and/or representatives of Defendants Optivision and/or ECFV.

40. At all times material to this action, Dr. Dudley and other real, apparent and/or ostensible agents, servants, employees, and/or representatives of Defendants Optivision and/or ECFV, were performing duties relating to and in furtherance of their relationship with Defendants Optivision and/or ECFV, for the benefit of Defendants Optivision and/or ECFV.

41. The negligence of Dr. Dudley and other real, apparent and/or ostensible agents, servants, employees, and/or representatives of Defendants Optivision and/or ECFV, occurred while they were performing within the scope of their relationship, making Defendants Optivision and/or ECFV liable for any damages suffered as a result of the negligence of Dr. Dudley and/or other real, apparent and/or ostensible agents, servants, employees, and/or representatives of Defendants Optivision and/or ECFV under the doctrine of *respondeat superior*.

42. Therefore Defendants Optivision and/or ECFV, as well as Dr. Dudley, are directly liable to Plaintiffs for the injuries and damages enumerated herein.

THIRD CAUSE OF ACTION
LOSS OF SERVICES OF MRS. WILKE

As for a third cause of action against the above-named Defendants, Plaintiffs allege and show the following to the Court:

43. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 42 of this Complaint with the same force and effect as if set forth fully hereinafter.

44. At all times herein mentioned, Mrs. Wilke was, and still is, the wife of Mr. Wilke, and as such, they duly reside and live together as husband and wife.

45. As a direct and proximate result of the foregoing occurrences and resulting injuries to her husband as afore stated, Mrs. Wilke has been deprived of the services, society, support, companionship and consortium of her husband, Mr. Wilke, and such loss in continuing into the future, all to her damage.

FOURTH CAUSE OF ACTION
SUBROGATION AGAINST ANTHEM

As for a fourth cause of action against the above-named Defendants, Plaintiffs allege and show the following to the Court:

46. Plaintiffs repeat, reallege, and incorporate by reference paragraphs 1 through 45 of this Complaint with the same force and effect as if set forth fully hereinafter.

47. Subrogated Defendant Anthem is an insurance company that provided medical benefits to Mr. Wilke at all times material to this action and is made a party to this lawsuit pursuant to § 802.03, Wis. Stats., as it may have paid some or all of the medical expenses incurred by Plaintiffs as a result of the incident which is the subject matter of this action.

48. Subrogated Defendant Anthem's right to recover its subrogated interest, if any, is contingent upon Plaintiffs being made whole by any recovery received from Defendants in this action pursuant to decisions in *Rimes*, *Garrity*, and their progeny.

WHEREFORE, Plaintiffs pray for the following relief:

- a. Judgment, both jointly and severally, against Defendants Dr. Dudley, Optivision and ECFV, in an amount to be determined at trial;
- b. All statutory interest;
- c. All costs, disbursements, and reasonable attorneys' fees; and

d. Any and all other relief that the Court deems appropriate in this matter.

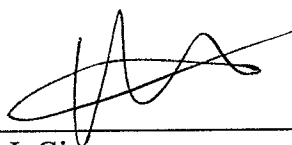
PLAINTIFFS DEMAND A TRIAL BY JURY OF SIX CITIZENS.

Dated this 28 day of December, 2011.

GINGRAS, CATES & LUEBKE, S.C.
8150 Excelsior Drive
Madison, WI 53717
(608) 833-2632

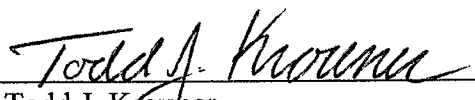
LAW OFFICE OF TODD J. KROUNER
93 North Greeley Avenue
Chappaqua, NY 10514
(914) 238-5800

BY: _____



Robert J. Gingras
State Bar No. 1002909
Heath P. Straka
State Bar No. 1031351

BY: _____



Todd J. Krouner
Application *Pro Hac Vice* Pending
Scott J. Koplik
Application *Pro Hac Vice* Pending

ATTORNEYS FOR PLAINTIFFS